

COLONEL OWEN W. TULLOS
JOE HOLCOMBE vs UNITED STATES

December 04, 2019

1

1 IN THE UNITED STATES DISTRICT FOR
2 THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

4 JOE HOLCOMBE, et al., :
5 :
6 Plaintiffs, :
7 :
8 v. :No:
9 :5:18-CV-00555-XR
10 UNITED STATES OF :
11 AMERICA, :
12 :
13 Defendant. :
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19
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21
22

VIDEOTAPED DEPOSITION OF
COLONEL OWEN W. TULLOS

Wednesday, December 4, 2019
1:33 p.m.

United States Attorney's Office
United States Department of Justice
175 N Street, Northeast
Three Constitution Square
Washington, D.C.

Noojan Ettehad, Videographer
Terry L. Bradley, Court Reporter

COLONEL OWEN W. TULLOS
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1 COLONEL OWEN TULLOS,
2 having been first duly sworn, testified as
3 follows:
4

5 EXAMINATION

6 BY MR. ALSAFFAR:

7 Q. Can you please state your name for
8 the record.

9 A. Owen Tullos.

10 Q. Could you spell your name.

11 A. O-W-E-N, T-U-L-L-O-S.

12 Q. And can you please tell me your
13 rank.

14 A. Colonel in the United States Air
15 Force.

16 Q. Colonel Tullos, thank you for being
17 here, and thank you for your service as well.

PEX 0106-0002

COLONEL OWEN W. TULLOS
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14 Can you please tell us right now
15 what your current station is.

16 A. I'm stationed at Quantico Marine
17 Corps Base with the OSI.

18 Q. With the OSI?

19 A. Yes.

20 Q. And if you had to describe, what is
21 your job?

22 A. I'm the Staff Judge Advocate for the

PEX 0106-0003

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1 Headquarters, Air Force OSI.

2 Q. So you're the Staff Judge Advocate
3 for the Air Force OSI stationed at Quantico,
4 the Headquarters, correct?

5 A. Yes.

PEX 0106-0004

6 Q. Okay. And where were you before
7 that? Before Langley.

8 A. Before Langley I was at Holloman Air
9 Force Base, New Mexico, as the Staff Judge
10 Advocate for the 49th Wing.

11 Q. Okay.

12 A. And I was there from 2012, July of
13 2012 to July of 2014.

PEX 0106-0005

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1 Q. All right. And just like with the
2 prior questions, let me ask them for this time
3 period. While you were the Staff Judge
4 Advocate at Holloman Air Force Base, were you
5 responsible for military -- in part -- military
6 criminal investigations, overseeing those, and
7 also overseeing and prosecuting those crimes
8 for military members?

9 A. Yes.

10 Q. And in pursuing and following your
11 job duties at Holloman Air Force Base, were you
12 responsible for knowing and understanding the
13 various Department of Defense instructions and
14 Air Force instructions and manuals that apply
15 to criminal investigations of military members
16 while you were there?

17 A. Generally, yes.

PEX 0106-0006

3 Q. Okay. Now, so fair for me to
4 understand that as a Staff Judge Advocate at
5 Holloman Air Force Base during the time that
6 Devin Kelley was being investigated, you were
7 not yourself an employee responsible for
8 reporting to the FBI NICS database?

9 A. That's correct.

19 Q. Okay. If you were consulted on
20 those questions, were you required -- while you
21 were at Holloman Air Force Base -- to be
22 familiar with the various instructions and

PEX 0106-0007

COLONEL OWEN W. TULLOS
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1 manuals that applied to reporting to the FBI?

2 A. Yes.

3 Q. Okay. And did you do that when you
4 were there? Familiarize yourself with those
5 instructions and manuals.

6 A. Generally.

PEX 0106-0008

COLONEL OWEN W. TULLOS
JOE HOLCOMBE vs UNITED STATES

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20 Q. You understand you're under oath?

21 A. Yes.

22 Q. You understand the penalties of

PEX 0106-0009

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1 perjury apply?

2 A. Yes.

3 Q. You understand it's the same oath as
4 if you were in a courtroom sitting on the
5 witness stand next to the Judge?

6 A. Yes.

PEX 0106-0010

12 Q. Okay. Um, one of the questions I
13 don't think I asked you as it related to your
14 service as a Staff Judge Advocate, did you
15 have -- this is at Holloman Air Force Base
16 during Devin Kelley's investigation and
17 conviction -- did you have a supervisory role
18 as Staff Judge Advocate?

19 A. Did I supervise other attorneys?

20 Q. Yes.

21 A. Yes.

PEX 0106-0011

4 Q. Okay. And that's what actually my
5 question was. You did not have any formal
6 training that you can remember, that you can
7 recall from the Air Force on how to train or --
8 either Judge Advocates or yourself -- on the
9 determination of probable cause for submission
10 of fingerprint data to the FBI?

11 A. For that limited purpose that's
12 correct.

17 Q. So you do remember having general
18 probable cause training in terms of the law
19 generally, correct? But you don't recall
20 having any training from the Air Force or
21 providing any training to your subordinates
22 relating to determination of probable cause for

PEX 0106-0012

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1 the collection and submission of fingerprint

2 data on military members?

3 A. I think that's fair.

4 Q. That's fair?

5 A. Yes.

6 Q. So it's a correct statement?

7 A. Yes.

PEX 0106-0013

7 Q. Okay. So your office Assistant
8 Judge Advocates or Assistant Staff Judge
9 Advocates would hold weekly meetings with OSI
10 separately and also 49th Security Forces
11 separately, correct?

12 A. Yes. And I don't recall whether it
13 was weekly with Security Forces. Sometimes
14 they didn't have as many cases.

15 Q. Okay. And would those meetings
16 involve in part reviewing active case files
17 that the agents at OSI and Security --
18 -- 49th Security Forces were
19 actively investigating?

20 A. Yes.

21 Q. Okay. And that would include Devin
22 Kelley's case, correct?

PEX 0106-0014

COLONEL OWEN W. TULLOS
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1

A. Yes.

PEX 0106-0015



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6 Q. Okay. And so just for the record,
7 you've come across DODI 5505.11 many times in
8 your career?

9 A. Well, no. A number of times.

10 Q. A number. I'm sorry.

11 A. And I would say that --

12 A number of times.

PEX 0106-0016

11 Okay. So let's look at page --
12 -- the first page, which is USA1806.
13 Now first of all -- and please look at it --
14 but DOD 5505.11 is a mandatory instruction. Is
15 that correct?
16 A. Yes.
17 Q. Okay. And that means that to the
18 extent that these apply to various folks within
19 the Air Force specifically, and investigating
20 military members, the instructions in here mean
21 you have to follow them. You don't have any
22 discretion to not follow these rules, correct?

PEX 0106-0017

COLONEL OWEN W. TULLOS
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1 A. That's correct.

2 Q. Okay.

3 I'm sorry. What was the answer?

4 A. That's correct.

PEX 0106-0018

7 And you can look if you want, if you
8 flip to Page 1811 of the instruction, and go to
9 No. 33. Article 128 - Assault, is one of the
10 listed reportable offences in Enclosure 2 of
11 this mandatory instruction. Is that right?

12 A. Yes.

13 Q. Okay. And that's the charge that
14 Devin Kelley was charged with and also
15 convicted on, correct?

16 A. Yes.

PEX 0106-0019

6 Q. Okay. So there will be some
7 instances where the -- it's my understanding,
8 but I want you to tell me your understanding --
9 in some instances a law enforcement
10 investigator like an OSI or 49th Security
11 Forces investigator can make their own
12 determination of probable cause to submit
13 fingerprints to the FBI.

14 A. Yes, that's correct.

17 I believe you said they were weekly
18 meetings with the Judge Advocates and the
19 agents and the law enforcement organization of
20 OSI and 49th Security Wing. Do you remember
21 that?

22 A. Yes.

PEX 0106-0020

12 Q. So your definition or understanding
13 of the definition of probable cause is a
14 reasonable grounds exists that a crime could
15 have occurred or that evidence to investigate a
16 crime is available?

17 A. That a crime did occur.

18 Q. Okay.

19 A. And that evidence exists and is in a
20 location as it pertains to a warrant.

PEX 0106-0021

COLONEL OWEN W. TULLOS
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21 Q. Let's look at (e) on Document 1806.

22 And it states that FD-249, which is the

PEX 0106-0022

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1 conviction --

3 So first, FD-249 is actually the
4 fingerprint card, correct?

5 A. Okay.

14 Next sentence: FD-249 shall be
15 submitted in accordance with this instruction,
16 and final disposition will be recorded and
17 submitted using an FBI/Department of Justice
18 Form R-84, Final Disposition Report.

19 You see that?

20 A. Yes.

21 Q. And what is your understanding of
22 who is required under --

PEX 0106-0023

COLONEL OWEN W. TULLOS
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1 First of all, that's a mandatory
2 requirement under this instruction, correct?

3 (Witness nodded.)

4 That "shall".

5 A. Yes.

PEX 0106-0024

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1 Q. Okay. So going back to what we were
2 talking about in terms of confirmation, I
3 assume that weekly meetings still occurred
4 between the Staff Judge Advocate's office and
5 the agents even after Devin Kelley was
6 convicted, correct?

7 A. Yes.

8 Q. All right. Is one of the
9 operational issues that you are or were
10 concerned about as an SJA, was that the right
11 agents in the 49 h and the AFOSI were receiving
12 these conviction notices?

13 MR. FURMAN: Objection to form.

14 You can answer.

15 THE WITNESS: I'm trying to make
16 sure I understood your question.

17 MR. ALSAFFAR: Sure.

18 THE WITNESS: Was part of my concern
19 that they received those?

20 MR. ALSAFFAR: Yes.

21 THE WITNESS: Yes.

PEX 0106-0025

COLONEL OWEN W. TULLOS
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14 Q. Is one of those reasons that
15 convicted criminals who meet qualifying
16 offences don't get their hands on dangerous
17 weapons?

18 A. Yes, it is.

21 Q. Okay. And is the reason that we
22 don't want criminals who have been convicted of

PEX 0106-0026

COLONEL OWEN W. TULLOS
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1 qualifying offences to get guns, is one of the
2 reasons they've demonstrated their willingness
3 to break the law first, correct? Is that fair?

4 A. As a society, yes, that's fair.

16 Q. Okay. Right. It's one of the
17 things we can do to prevent dangerous people
18 from having guns that could increase the risk
19 of harm to the public generally, fair?

20 A. That's a fair society interest, and
21 we're interested in that as well.

PEX 0106-0027

10 Would you agree that the conviction
11 of Devin Kelley was a dangerous crime?

12 A. Yes.

13 Q. You agree that the crime he
14 committed was a qualifying offence to be
15 reported, and if he goes to a federal firearms
16 licensee he should be denied access to weapons,
17 correct?

18 A. Yes, that's correct.

PEX 0106-0028

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1 Would you agree that when these
2 dangerous criminals are convicted and reported
3 and denied access to firearms, that we are
4 increasing the safety to the general public?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: Yes.

8 Q. Would you also agree that if a
9 dangerous criminal like Devin Kelley, who's
10 been convicted of a qualifying offence that
11 would deny him access to firearms, that if that
12 is not reported, those convictions are not
13 reported, and people like Devin Kelley do get
14 access to firearms, that increases the risk of
15 harm to the general public?

16 MR. FURMAN: Objection to form.

17 BY MR. ALSAFFAR:

18 Q. Do you agree with that?

19 A. Yes, it could. And I --

20 It could, yes.

PEX 0106-0029

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1 Q. But the reason why we have those
2 rules in place, one of the reasons to report
3 dangerous criminals like Devin Kelley to the
4 FBI, is that if we don't do that we could be
5 increasing the risk of harm to the public
6 generally, correct?

7 MR. FURMAN: Objection to form.

8 MR. ALSAFFAR: Is that fair?

9 THE WITNESS: That's a fair
10 statement. Yes.

PEX 0106-0030

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14 Let me move your attention, we'll
15 skip ahead on this Document. 1815 of --

16 It's Enclosure 4, Procedures of DODI
17 instruction 5505.11. I draw your attention to
18 No. 1: For military subjects (investigated by
19 a DCIO or other DOD law enforcement
20 organization) the FD-249 --

21 A. Sorry. I'm missing --

22 Q. Oh. I apologize.

PEX 0106-0031

6 For military subjects (investigated
7 by a DCIO or other DOD law enforcement
8 organization), the FD-249 shall be submitted
9 when an agent or law enforcement official
10 determines, following coordination with the
11 servicing SJA or legal advisor if necessary,
12 that probable cause exists to believe that the
13 person has committed an offence listed in
14 Enclosure 2. If applicable, such coordination
15 shall be documented in the investigative file.

16 Did I read that correctly?

17 A. Yes.

18 Q. Okay. And that again is a mandatory
19 instruction as well, "shall", correct?

20 A. Yes.

PEX 0106-0032

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13 Q. Right. And that's going back to
14 what you said earlier that it was fine, it's
15 okay and for the individual agents and Security
16 Forces personnel at 49th to --

17 -- if they made a probable cause
18 determination, if they made it in their own
19 minds, at that point it's mandatory for them to
20 report, and they don't need to consult with
21 your office, correct?

22 A. Correct.

PEX 0106-0033

8 Q. Okay. But they have no discretion
9 when they receive a report of conviction to not
10 send that to the FBI, correct? If it's a
11 qualifying offence like Devin Kelley's.

12 A. Qualifying offence.

13 Q. Correct. And Devin Kelley's was,
14 right? Yeah?

15 A. That's the way I would read that.
16 Yes.

17 Q. No. 3 says, under (b) says: Within
18 15 calendar days after final disposition of
19 military judicial or nonjudicial proceedings,
20 or the approval of a request for discharge,
21 retirement, or resignation in lieu of court
22 martial, disposition information shall be

PEX 0106-0034

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1 reported by the DCIO or other DOD law
2 enforcement organizations on the R-84, or an
3 electronic data transfer equivalent, if it has
4 not already been reported on an FD-249. Do not
5 hold the FD-249 or R-84 pending appellate
6 actions.

7 Do you see that?

8 A. I do.

9 Q. So in this situation there's no
10 requirement that the agents go through some
11 independent or individual probable cause
12 determination. Is that fair to say in this
13 fact scenario?

14 A. That's correct.

PEX 0106-0035

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8 Exhibit 3 is the AFOSI Manual 71-21,
9 and Bates stamped USA34. And you see at the
10 top of the page it states: "Compliance with
11 this publication is mandatory."

12 Correct?

13 A. Yes.

21 Q. Okay. And this manual, Air Force
22 Manual, applies to the Air Force Office of

PEX 0106-0036

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1 Special Investigations, correct?

2 A. Yes.

3 Q. And that would be AFOSI Detachment

4 225. That was an AFOSI office that this

5 mandatory manual applied to, correct?

6 A. That's correct.

PEX 0106-0037

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21 If one of the reasons why it's
22 important to not conduct a poor investigation,

PEX 0106-0038

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1 to do it right as you said --

2 A. Uh-huh.

3 Q. -- is that if it's done poorly the
4 Air Force is unable to deter and neutralize
5 individuals like Devin Kelley.

6 MR. FURMAN: Objection to form.

7 THE WITNESS: That's a possi --

8 Yes, that's a possibility.

PEX 0106-0039

13 Q. Okay. And let's look at --

14 Do you have exhibit, the 71-121 in
15 front of you?

16 A. Yes.

17 Q. Look at Section 1.8 under Lessons
18 Learned.

19 A. Yes.

20 Q. It states: Within 30 days of the
21 conclusion of the trial, the local SJA and
22 available members of the trial team will

PEX 0106-0040

L V S ;

9
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1 conduct a "hot wash" with AFOSI to review case
2 lessons learned.

3 Did I read that correctly?

4 A. Yes.

PEX 0106-0041

16 Here, and according to this
17 instruction or in the manual 71-121, does not
18 wash include going back and looking at the
19 actual investigations themselves and seeing how
20 those were conducted and the evidence gathering
21 and recording and sort of operational elements
22 of a criminal investigation? Would you look at

PEX 0106-0042

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1 that with the AFOSI case agents?

2 A. We could.

3 Q. Okay. So it could be part of it.

4 A. It could be part of it.

PEX 0106-0043

12 You were still the SJA at Holloman
13 Air Force Base 30 days after Devin Kelley's
14 conviction. Is that right?

15 A. Yes.

16 Q. Do you recall specifically doing a
17 hot wash for Devin Kelley's case?

18 A. I specifically do not recall.

19 Q. Okay. When you or your agents under
20 your supervision were doing the hot wash for
21 this case, do you have any evidence that you
22 either recall or have seen that shows that your

PEX 0106-0044

COLONEL OWEN W. TULLOS
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1 office either supervised or oversaw and ensured
2 that the AFOSI case agents reported the
3 conviction you obtained on him to the FBI?

4 A. I don't recall seeing anything.

5 Q. And to this day you don't have any
6 evidence you can show me that establishes that
7 your supervision command at the SJA
8 specifically reviewed whether or not the AFOSI
9 case agents reported your conviction that you
10 obtained to the FBI?

11 A. We have the evidence that it was on
12 a distribution list. I don't have evidence
13 what happened after that.

PEX 0106-0045

COLONEL OWEN W. TULLOS
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1 Q. Okay. Well let me go back to when
2 you were at Langley.

3 I'm sorry. When you were at
4 Vandenberg is what I meant.

5 A. When I was at Vandenberg. Okay.

6 Q. Yeah. Air Force.

7 You were the SJA from 2016 to 2019,
8 correct?

9 A. Yes.

10 Q. So you were reviewing Air Force
11 investigation files like you were at Holloman
12 Air Force Base, correct?

13 A. Generally.

14 Q. So from 2016 to 2019 do you recall
15 whether or not you had a checklist or any other
16 kind of supervisory checklist that you would
17 push down to the folks working underneath you
18 to ensure that the Air Force case agents were
19 reporting to the FBI qualifying convictions at
20 that base?

21 A. We did have checklists. And I don't
22 recall any specific guidance on OSI's reporting

PEX 0106-0046

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1 Kelley's fingerprints or conviction to the FBI
2 as required by the mandatory instructions?

3 A. That's correct.

20 Q. When you were at Holloman Air Force
21 base and involved in Devin Kelley's
22 investigation, you were a federal employee

PEX 0106-0047

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1 acting within the course and scope of your
2 employment with the Federal Government,
3 correct?

4 MR. FURMAN: Same objection.

5 THE WITNESS: Yes.

PEX 0106-0048

7 Let me go back. Let me go back to
8 the manual. There's a question I wanted to ask
9 you. If you'll look at the manual which is
10 Bates stamped 34. What Exhibit number is that?

11 A. 3.

12 Q. 3. If you would flip real quick to
13 Page 84, which is the end of Section 4.24.4.
14 The sentence states at the very beginning --

15 I'm sorry. Are you there?

16 A. 24.4.

17 Q. Um, it's on Page 84.

18 A. I see it.

19 Q. 4. --

20 Yes. 4.24.4.

21 A. Yes.

22 Q. Use the AFOSI Investigative

PEX 0106-0049

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1 Sufficiency Checklist (Attachment 7) or a more
2 comprehensive checklist.

3 Do you see that statement? And if
4 you will --

5 I'm sorry. Do you see that?

6 A. I do.

7 Q. If you flip to Page 200, Attachment
8 7, it's entitled AFOSI Investigative
9 Sufficiency Checklist. Do you see that?

10 A. 200?

11 Q. I'm sorry. It's 200. Yes, sir.

12 A. Okay.

PEX 0106-0050

18 Q. The very first item on the AFOSI
19 Investigative Sufficiency Checklist is: 1.
20 Have notifications and coordinations been
21 conducted with: AFOSI specialists?
22 And (b). Legal authority?

PEX 0106-0051

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1 Do you see that?

2 A. Yes.

3 Q. And the only legal authority on the
4 Holloman Air Force base when Devin Kelley was
5 there and you were doing the trial and
6 investigation, was that's the Staff Judge
7 Advocate's Office, correct?

8 A. That's typically.

12 When you were at Holloman Air Force
13 Base did you train and/or supervise your Staff
14 Judge Advocates to go over this checklist with
15 the agents when they had either the weekly
16 meetings or hot wash meetings after a
17 conviction?

18 A. I don't recall specific training. I
19 do recall discussion of the sufficiency
20 checklist. I don't recall specific training.

:

PEX 0106-0052

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3 Q. Okay. And look at No. 22, which is
4 Page 202, and 23. It states, No. 22: Did unit
5 leadership must review all FD-249s (both hard
6 copy and electronic when accomplished) and
7 R-84s for accuracy and completeness? (a) were
8 those reviews appropriately documented?

9 Do you see that?

10 A. Yes.

PEX 0106-0053

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3 Q. And 23 states: Were fingerprint
4 cards submitted accurately based upon military
5 judicial and NJP proceeding considerations?

6 Do you see that?

7 A. Yes.

8 Q. Okay. And that is referring to
9 whenever there --

10 -- in part, is referring to whenever
11 there's a conviction, were those fingerprint
12 cards accurately submitted. Is that fair?

13 MR. FURMAN: Objection to form.

14 THE WITNESS: Yes.

PEX 0106-0054

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[3 v : 1 2 .

2 Q. Okay. So Specification 2 is a crime
3 punishable by more than 1 year, correct?

4 A. Yes.

5 Q. And Specification 1 and 2 that Devin
6 Kelley was convicted of combined are up to, you
7 think, 5 years or 5 1/2, 6 --

8 -- 5 years and 6 months. Is that
9 your understanding?

10 A. Yes.

PEX 0106-0055

8 Q. Okay. So what this means is that
9 there was a mandatory direction for this report
10 result of trial of Devin Kelley's conviction to
11 be sent to this distribution list as we see
12 here?

13 A. That's correct.

PEX 0106-0056

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16 Q. Yes. If could you identify for me
17 what each one of those are in the distribution
18 list on Exhibit Bates stamp 12947.

19 A. Yes. Air Combat Command Commander
20 and Judge Advocate, 12th Air Force Commander
21 and Judge Advocate, 49th Wing Commander and
22 Judge Advocate, 49th Medical Group Commander,

PEX 0106-0057

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1 49th Force Support Squadron, DPM is the
2 personnel section.

3 Q. What was the one before? What was
4 FSS? 49 FSS.

5 A. Force Support Squadron.

6 Q. Okay.

7 A. And within that Force Support
8 Squadron there's a personnel shop that records
9 all the personnel actions. So a bad conduct
10 discharge would be an example of where they
11 would be taking personnel action.

12 The 49th Comptroller Squadron, and
13 they have a financial FMFP Division. 49th
14 Security Forces Squadron Commander and SFOI,
15 which is their investigation section, Air Force
16 Legal Operations Agency, Area Defense Counsel,
17 Air Force Office of Special Investigations
18 Detachment 225, and Central Docketing Office.

PEX 0106-0058

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20 Okay. So fair to say that the
21 report of Devin Kelley's conviction was sent to
22 ten different Department of Defense units,

PEX 0106-0059

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1 correct?

2 A. Yes.

PEX 0106-0060

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12 Q. Okay. When you met with those
13 agencies you just identified after Devin
14 Kelley's conviction, did you confirm whether or
15 not they reported the conviction to the FBI?

16 A. No, not that I know of. Somebody
17 else may have.

18 Q. By the way, is Specification 1 a
19 crime of domestic violence?

20 A. Yes.

21 Q. And under the Lautenberg Gun Control
22 Act Amendment, that's in and of itself required

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1 to be reported to the FBI, correct?

2 A. That's correct.

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Exhibit 4 is Air Force Instruction
51-201 Administrative --
-- Administration of Military
Justice. And Air Force Instruction 51-201 is a
mandatory instruction, correct?

A. That's correct. This is the first
one that's specifically with regard to JA
function.

Q. So you're saying this is specific to
the law side?

A. Uh-huh.

Q. The JA side.

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1 Okay. If you can go to 13.22 on
2 Page 11987. And at the bottom this mandatory
3 instruction defines a crime of domestic
4 violence is an offence that has its factual
5 basis in one of the following: The use or
6 attempted use of physical force, or the
7 threatened use of a deadly weapon.

8 Do you see that?

9 A. I'm sorry. I'm trying to --

10 Q. That's okay. That's okay.

11 A. Is it 1322?

12 Q. Let me start over.

13 It's 1322. Yes, sir. And the
14 bottom sentence is what I'm referring to.

15 A. Okay. Yes, I'm following.

16 Q. Okay. Do you agree with that
17 definition of crime of domestic violence?

18 A. Yes.

19 Q. And that's what Devin Kelley's
20 Conviction No. 1 met that definition?

21 A. The use or attempted use of physical
22 force.

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1 Q. Yes.

2 A. Or threatened use of a deadly
3 weapon.

4 Q. So that's a "yes"?

5 A. Yes.

6 Q. Okay. And qualifying convictions
7 include a crime of domestic violence tried by a
8 general or special court martial, correct?

9 A. Yes.

10 Q. This was a general court martial,
11 correct?

12 A. Yes.

13 Q. And when I say "this", I mean Devin
14 Kelley's court martial was a general court
15 martial. Is that right?

16 A. Yes.

17 Q. And on the front page of -- and I'm
18 showing it to you right now. It's on the
19 screen -- of the report of result of trial,
20 under Type of Court you have clearly marked
21 this as a general court martial, correct?

22 A. That's correct.

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1 Q. It's hard to miss, anybody reviewing
2 this to know that this is a general court
3 martial, correct?

4 MR. FURMAN: Object to form.

5 THE WITNESS: That is correct.

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13 Q. Right. So bottom line is the
14 Lautenberg requirements for reporting this to
15 the FBI, as you've described in your report of
16 result of trial, were met in how you described
17 it in this document, correct?

18 A. Yes.

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8 Q. Let me do this to clarify --

9 Thank you. Because I want to get it
10 straight on the record. So the Air Force
11 Security Force sort of chain of command of
12 people who in the Air Force had authority to
13 discipline investigators in the military for
14 failure to collect, failure to store, failure
15 to report fingerprint data and convictions to
16 the FBI, would have been the Security Forces
17 Unit Commander, the intermediate supervisors,
18 the Mission Support Group, Wing Commander, and
19 that could go all the way up to the Secretary
20 of Air Force.

21 A. Yes.

PEX 0106-0068

15 Q. Okay. So the people who had --
16 -- in the Air Force who had the
17 authority to discipline military investigators
18 involved in Devin Kelley's case for failure to
19 collect, failure to store, and failure to
20 report his fingerprint data and his convictions
21 to the FBI, included -- and this is for the
22 AFOSI side -- included the intermediate

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1 supervisors, Detachment Commanders, Region
2 Commanders, Headquarters AFOSI Commander, and
3 the Secretary of Air Force. Is that right?

4 A. Yes.

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17 Q. Okay. So as part of your duties as
18 an SJA at Holloman Air Force Base and a
19 supervisor of Judge Advocates at the base, you
20 were aware that a High Risk For Violence
21 Response Team was put together to specifically
22 assess Devin Kelley's risk factors, correct?

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1 A. Yes.

2 Q. And specifically, the High Risk For
3 Violence Response Team was put together for
4 Devin Kelley in May 2012 by the Air Force,
5 correct?

6 A. Yes.

7 Q. And the reason why that the High
8 Risk For Violence Response Team was put
9 together by the Air Force in May 2012 was
10 because Devin Kelley was a major threat to
11 commit an act of violence.

12 MR. FURMAN: Objection to form.

13 MR. ALSAFFAR: Correct?

14 THE WITNESS: Yes.

:

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2 Q. Fair. Fair. So the High Risk
3 Violence Response Team at Holloman Air Force
4 Base in May 2012 was convened to decide whether
5 Devin Kelley was a major threat for violence,
6 correct?

7 A. That's correct.

8 Q. And they ended up determining that
9 in fact Devin Kelley was a high risk major
10 threat to commit an act of violence, correct?

11 A. Yes.

12 Q. And you didn't disagree with that
13 when you were part of the review of that
14 decision, were you?

15 A. No, I don't disagree with it.

-

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10 Q. So two questions there. Do you
11 agree that confinement for Devin Kelley in
12 June 2012 was necessary because he was a
13 foreseeable risk to engage in serious criminal
14 misconduct?

15 MR. FURMAN: Objection to form.

16 THE WITNESS: Yes.

17 MR. ALSAFFAR: I'm sorry. Your
18 answer was?

19 THE WITNESS: Yes.

PEX 0106-0074

13 Q. When a High Risk For Violence Team
14 concludes that a military member is a major
15 threat to commit an act of violence, and it is
16 foreseeable that that person -- Devin Kelley --
17 would engage in serious criminal misconduct and
18 is placed --

19 -- and has attempted to purchase a
20 firearm, and is placed in confinement before
21 his trial, that that rises to your definition
22 of probable cause to report his fingerprints,

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1 collect them and submit them to the FBI. Is
2 that fair?

3 MR. FURMAN: Object to form.

4 THE WITNESS: I think that would be
5 fair. Yes.

-

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3 Q. So what that means first of all,
4 there were 6978 reportable people to the FBI
5 that were not entered in the FBI background
6 check system, correct?

7 MR. FURMAN: Objection. Form.

8 THE WITNESS: Yes.

10 Q. And that they've only been able to
11 discover and put into the record, FBI record,
12 5607, correct?

13 A. Yes.

PEX 0106-0077

6 Q. With respect to the plea agreement
7 that was reached with Kelley, do you recall how
8 long the maximum sentence was under that
9 agreement?

10 A. The maximum confinement that would
11 have been approved would have been 3 years.

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12 Q. Just because there are a lot of
13 laws, that's not an excuse to not follow
14 regulations, especially when they're mandatory,
15 right? Agreed?

16 A. That's correct.

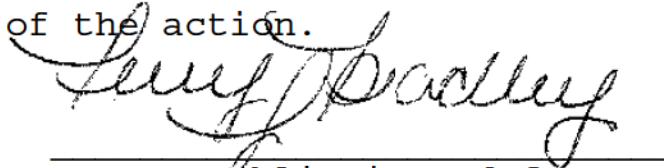
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CERTIFICATE OF NOTARY PUBLIC

I, Terry L. Bradley, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in shorthand and thereafter reduced to computerized transcription under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Notary Public in and for
the District of Columbia

My Commission expires: April 30, 2022

PEX 0106-0080